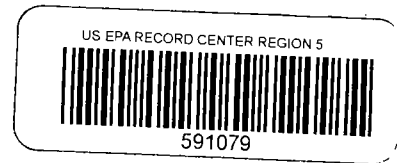


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Judge Robert J. Miller



UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CONSOLIDATED RAIL CORPORATION)
a/k/a/ CONRAIL,)
)
Defendant and)
Third Party Plaintiff,)
)
vs.)
)
PENN CENTRAL CORPORATION,)
et al.,)
)
Third Party Defendants,)
-----/

CASE NO.:
S90-00056

The deposition of WILLIAM R. MELLEEN,

Date: Tuesday, June 8, 1993

Time: 11:25 o'clock a.m.

Place: 205 West Jefferson Boulevard
Suite 312
South Bend, Indiana 46601

Called as a witness by the Plaintiff, in
accordance with the Federal Rules of Civil
Procedure, pursuant to notice duly served.

+ + + oOo + + +

Before Lois A. Schoenbeck
Notary Public, State of Indiana

APPEARANCES:

MR. STEVEN C. MASON
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For the Plaintiff;

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Cincinnati, Ohio 45202,

For Third Party Defendant.

I N D E X

THE DEPOSITION OF

WILLIAM R. MELLEN

DIRECT EXAMINATION

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CROSS-EXAMINATION

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FURTHER EXAMINATION

By Mr. Cunningham Page 98

E X H I B I T S

Plaintiff's Exhibit,
 Marked for Identification:

- 1 - Penn Central List of Approved Cleaning
 Materials and Methods, 24 pgs Page 22

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WILLIAM R. MELLEN,
called as a witness by the Plaintiff, being
first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. MASON:

Q My name is Steve Mason. I'm with the United
States Environmental Protection Agency, and I'm
going to be asking you some questions today
about the time you spent at the Elkhart rail
yard and the Conrail rail yard in Elkhart. Mr.
Ermilio and Mr. Cunningham will likely ask you
questions too as we go through this today.

If I ask you a question you don't
understand, just ask me to rephrase it and I
will. If you would, please wait until a
question is asked before you answer it.

A (Witness nodded head.)

Q When you give an answer, make sure you verbalize
your answer. Say yes or no, because the court
reporter can't take down head movements.

A Okay.

Q Have you ever given deposition testimony before
in any case?

A I have.

1 Q Do you recall approximately when?

2 A Approximately when?

3 Q Or what was the case?

4 A Well, that's the part I can't remember.

5 Q Did it have anything to do with the Conrail
6 yard?

7 A No.

8 Q Have you ever been involved in a trial or any
9 other legal proceeding?

10 A I was on a jury once.

11 Q Have you ever been a party to an action?

12 A No.

13 Q Do you understand, though, that you have taken a
14 oath so that the answers you provide today are
15 true and correct to the best of your knowledge?
16 Do you understand that?

17 A I understand that.

18 Q Mr. Mellen, did you prepare any notes or review
19 any documents before you came here today?

20 A No, I didn't.

21 Q Have you had conversations with former employees
22 or anyone in connection with this deposition
23 today?

24 A No, I have not.

25 Q Other than --

1 A Other than the people -- you people that have
2 contacted me.

3 Q I would like to just sort of ask you a few
4 questions about your background.

5 A Okay.

6 Q Did you attend high school?

7 A I did.

8 Q Where was that?

9 A In Denison, Texas, at St. Xavier Academy.

10 Q Did you graduate?

11 A I did.

12 Q What year?

13 A 1941.

14 Q Did you attend any college?

15 A No, I did not.

16 Q Have you ever taken any college courses?

17 A I did. After working with the railroad, they
18 sent me to school -- different schools, just
19 only mechanical schools.

20 Q Do you recall any of the schools you went to or
21 the nature of the courses you took, in general?

22 A Labor relations.

23 Q Do you know what year that would have been?

24 A It would have been 1952 and 1963 and 1966.

25 Q Any courses on repair work?

1 A Oh, almost yearly from 1963 until 1978.

2 Q Did any of those courses deal with the use of
3 dangerous materials or hazardous chemicals?

4 A The railroad had a class on hazardous materials.

5 Q Which railroad?

6 A That would have been Conrail and Penn Central.

7 Q Do you remember what year when you were with
8 Penn Central that you would have attended one of
9 these courses on hazardous material?

10 A '75 I would guess.

11 Q Do you remember where that course was?

12 A In Chicago.

13 Q Do you recall whether this course talked about
14 materials used at the rail yard as far as
15 cleaning materials?

16 A It dealt mostly with the railroad industry and
17 their shipping of hazardous materials and
18 warning labels. That's mostly what it was
19 about, not what the railroad was doing, only
20 what shippers were doing.

21 Q Do you recall whether it talked about shipping
22 chemicals or specific substances? Do you
23 remember any names of any of the materials?

24 A I can't.

25 Q That's fine.

1 What year did you start working at the
2 Elkhart yard?

3 A In 1969, January the 12th.

4 Q Which railroad was it at the time?

5 A That was the Penn Central.

6 Q What was your first job there in January of '69?

7 A General foreman.

8 Q Now, was that general foreman related to any
9 particular shop on the yard?

10 A It was the diesel terminal. I was in charge of
11 the maintenance and dispatch of all diesel
12 locomotives.

13 Q Where was your office?

14 A At the engine house in the yard.

15 Q Now, would that be the diesel house?

16 A That would be the same as the diesel house.

17 Q Now, as general foreman, were you in charge of
18 the diesel house?

19 A I was in charge of the diesel shop, that's
20 right.

21 Q Before coming to the Elkhart yard in January of
22 1969, what was your job before that?

23 A I was general foreman at Frontier Diesel
24 Terminal in Buffalo, New York.

25 Q Is that another rail yard?

1 A It was. Frontier Yard was a big yard in
2 Buffalo.

3 Q Which railroad was that with?

4 A That was New York Central and Penn Central.

5 I was working for the New York Central in
6 Buffalo when the merger took place between the
7 Pennsylvania Railroad and the New York Central.

8 Q When did you start working for the New York
9 Central?

10 A 1941.

11 Q So that would have been your first job right out
12 of high school?

13 A Well, I had two smaller jobs out of high school
14 before I started on the railroad, but that was
15 the first major job, you might say.

16 Q When you first went to work for the New York
17 Central, did you work on locomotives then as
18 well?

19 A I was a machinist apprentice in Cincinnati,
20 Ohio, at Riverside round house.

21 Q What did you do as a machinist?

22 A Made repairs to steam locomotives and operated
23 machinery, but that still was all for repair of
24 steam locomotives.

25 Q When you left the Frontier Diesel Terminal, what

1 was your position at that time?

2 A General foreman. They called it terminal
3 foreman, but the duties were identical to a
4 general foreman, so it really is the same thing.

5 Q So your move from Frontier to Elkhart was sort
6 of a lateral move?

7 A It was.

8 Q Was the Elkhart yard a bigger yard?

9 A Yes, it was.

10 Q Did the nature of the work you did on
11 locomotives change?

12 A Not one bit, no.

13 I wanted to come to Elkhart because it's a
14 smaller area, a nicer area to live in; that's
15 why I came here.

16 Q And again, that was January of 1969?

17 A Right.

18 Q Could you describe for me just the general sort
19 of layout of the diesel shop when you came to
20 the yard in '69?

21 A The diesel shop was in approximately the middle
22 of the yard. They called that the Robert R.
23 Young Yard at that time. And the shop was
24 located in approximately the middle to the north
25 side of the yard. It consisted of one --

1 Q Was it one building?

2 A One building with a single track capable of
3 holding two locomotives.

4 Q Now, did this track run through the shop?

5 A It did.

6 And then there were nine other tracks that
7 made up the diesel terminal area of the Robert
8 R. Young Yard.

9 Q Were these nine tracks outside the shop?

10 A They were outside and two of them were first
11 servicing diesel locomotives; that's fueling,
12 sanding, applying lube oil, water, whatever was
13 necessary for these locomotives to be made ready
14 for use -- dispatchment.

15 Q And that was done on two tracks?

16 A Yeah.

17 And the other tracks, then, were used for
18 storage and switching around, making moves. In
19 a twenty-four hour period each day, we
20 dispatched approximately 110 locomotives.

21 Q That's 110 locomotives for what time period?

22 A Every twenty-four hour period each day. That
23 only leaves you almost ten minutes to service
24 one -- you know, each one.

25 Q So there were two tracks that ran through the

1 shop?

2 A One track that ran through the shop.

3 Q One track through the shop.

4 What was the floor of the shop like?

5 A Cement with a pit running the length of the shop
6 about three foot deep. There were drains and
7 lights in the pit for working under locomotives.

8 Q So was the pit underneath the tracks?

9 A Underneath the track, um-hmm; in other words,
10 the track straddled the pit.

11 Q Ran perpendicular to the pit?

12 A Well, under it.

13 Q Now, were there any drains in the pit?

14 A Drains in the pit.

15 Q Do you know where these drains ran to?

16 A The drains all went into two catch basins and
17 from there all the drainage went to an oil
18 separator.

19 Q Where was the catch basin?

20 A Under ground in the -- I'm trying to think of
21 the right word to say here -- like a cement
22 container. Everything ran into this basin from
23 the different areas of the yard because the
24 entire area was constructed with drainage tile
25 under the ground to collect any spillage or

1 whatever that might be spilled went into these
2 drainage tiles, into this separator. Then from
3 the separator, it went out into the sewage
4 system.

5 Q The catch basin was entirely under ground?

6 A Yeah.

7 Q Do you know how far from the diesel shop it was?

8 A I'm trying to think of the word I would want to
9 say, but I just can't. I have one in my yard.
10 I have a septic system in my yard and -- dry
11 well. That's what I'm trying to say.

12 Q Was it one of your responsibilities to see that
13 that was maintained?

14 A It would have been my responsibility had one not
15 been working to notify the people that
16 maintained it to make a repair.

17 Q And this arrangement with the pit and the catch
18 basis, was that in place when you started in
19 January of '69?

20 A Yes, it was. When the facility was built, it
21 was made that way.

22 Q Do you recall any occasion where it wasn't
23 working properly?

24 A There would be times because there is so much
25 litter, debris, trash, so to speak, that would

get into the catch basins that it would have to be cleaned out so the flow could go through. Once it backed up, then we would have to stop everything and get them to clean it out so it would drain.

Q What would happen if it backed up?

A Well, water would lay in the pit. See, the pit being the lowest place in the facility, water would start to come up in there. Then you couldn't work under the locomotives in the shop, so you would have to get it opened up.

Q Was the pit ever just pumped out with the discharge pumped out on the ground or anything?

A No, no. The pit would hold considerable amounts, you know. It was like 120 feet long and three feet deep and four foot wide.

Q Do you recall if there were ever cracks in any of the catch basins that were identified or if there were leaks from the basins?

A No, I don't. Since they were under ground, it would be pretty hard to know that. You would have to dig them up, which we never did. We didn't dig them up and look at them. But as soon as water would start to get in the pit, then the men wouldn't work and you had to have

1 it cleaned. So the railroad maintenance
2 facility people that took care of the facility
3 in case anything didn't work. Even if a little
4 bulb out, it was their job to come and put the
5 light bulb in.

6 Q Do you remember anyone working on the catch
7 basins?

8 A Oh, any time we had water backed up in the pit,
9 they came out night or day, twenty-four hours a
10 day.

11 Q Do you recall digging down to the basins?

12 A Oh, no. It was never necessary. All they had
13 to do was just reach down and clean it with a
14 small bucket and, you know, these things they
15 dig with.

16 I have an awful time trying to remember the
17 words I want to say. I never used to have that
18 trouble before, but I do now.

19 Q What would happen with the accumulated debris?

20 A They would take and put it in a -- oh, like a
21 wheelbarrow and load it in a truck and haul it
22 out. Now, ask me where they dumped it. I don't
23 know.

24 Q What was the department you would call if you
25 were having trouble with the pit?

1 A Maintenance of facility.

2 Q Maintenance?

3 A Maintenance of facility.

4 Q Do you recall personally making a call to the
5 maintenance of facility?

6 A Oh, yes, yes, sure did, many times.

7 Q To work on the catch basins?

8 A Well, on that, on occasion to make repairs to
9 the fueling system, the sanding system, the
10 lighting system, or there was always some
11 maintenance to be done in a building.

12 Q Do you ever recall seeing standing water around
13 where the catch basin was or --

14 A After a hard rain, there is always standing
15 water. In Chicago yesterday, they had standing
16 water everywhere.

17 Q Was the catch basin open on top, do you know?

18 A Not what -- what we've been talking about here
19 is the drainage from the diesel terminal was
20 going through these tiles into a catch basin
21 outside an oil separator. That never had water
22 standing around. I think what you're referring
23 to now is that in the yard there was like a
24 skimmer pond. The railroad had three skimmer
25 ponds in the yard.

1 Q What I was just talking about is where the catch
2 basin was if there looked like there was
3 standing water there?

4 A No.

5 Q Let's talk a little bit more about other parts
6 of the shop.

7 Was there a area where materials were
8 stored -- cleaning materials?

9 A At times we would have cleaning materials
10 stored, yes. It was shipped in fifty-five
11 gallon drums.

12 Q What other divisions were in the diesel shop?
13 Were there other divisions of the railroad
14 offices there?

15 A The trainmaster and the road foreman had offices
16 there as well.

17 Q Who would have been in charge of making sure
18 there were enough cleaning materials and the
19 stuff that was needed to do the work on the
20 locomotives? Whose job would that have been?

21 A That would have been my job.

22 Q Who would you have contacted to make sure you
23 had enough supplies?

24 A I would have ordered the material from the
25 stores department. I personally didn't always

1 order it. Mostly, I had a clerk that would do
2 the ordering of material. We knew how many
3 locomotives would be assigned to us and
4 approximately how much you would use each month,
5 and so we ordered that amount each month. Not
6 that we always got it, but we ordered it.

7 Q Would you sign an order form?

8 A Yes, we would make out an order.

9 Q Would that form have a corresponding designation
10 number or a name or just --

11 A Well, it was all railroad forms. Everything was
12 -- nothing went out to a separate company. In
13 other words, these were just forms that the
14 railroad had for ordering material. Then we
15 filled out forms, turned it in to the stores
16 department, they ordered the material, then they
17 would distribute it, bring it to us in trucks.

18 The stores department of the railroad had
19 their own trucks and hauled it in to our
20 facility.

21 Q Would the form have typed on it the material
22 name and you would check it, or would you have
23 to write on the form what you wanted?

24 A You would have to write on the form what you
25 wanted.

1 Q Would you do that?

2 A No. My clerk usually did that. Most of the
3 time we ordered by telephone, and they just
4 filled in when you called to tell them what you
5 wanted. They would write in what you wanted.

6 Q Who would you telephone?

7 A The stores department.

8 Q So they would keep the records of what was
9 ordered?

10 A For a certain period they would, you know, until
11 you got it so they would know you ordered it,
12 you were charged for it, and then you received
13 it. Then they could dispose of it once you've
14 received what you ordered and then it would be
15 charged to whatever department you're in. The
16 stores department ordered material for all the
17 departments in the railroad.

18 Q But if a form was to be filled out for a
19 material ordered, either you or your clerk would
20 sign the form?

21 A My clerk mostly always did that, yeah.

22 Q Do you remember who some of your clerks were?

23 A Devon Hoffman. He ordered almost all of our
24 material.

25 Q What years would this have been?

1 A This would have been from 1969 to 1983. He
2 retired.

3 Q Devon Hoffman was your clerk from '69 to '83.

4 A Right. Then he retired. I missed him so bad, I
5 retired, too.

6 Q From '69 to '83 then you were shop foreman or
7 you were head of the diesel shop?

8 A Right, I was general foreman. Then when Conrail
9 took over, they made me a shop manager. It was
10 really the same duties. The only thing was they
11 only had so many shop managers and, if they
12 needed you at another terminal, then you would
13 be obligated to move and assume the
14 responsibilities in another part.

15 Q Do you recall who the shop foreman was before
16 you came to the yard in '69?

17 A His name was Harry McCann.

18 Q How do you spell that?

19 A M-c-C-a-n-n. I believe that's the way it was.

20 Q When you were in the car shop --

21 A No, locomotive shop.

22 Q When you were in the diesel shop, was there some
23 sort of a handbook or guide book that would tell
24 you what repairs to do on locomotives and what
25 methods to use?

1 A They had standard maintenance forms. And
2 locomotives were subject to a monthly,
3 quarterly, semi-annual, and annual inspections.
4 And each one had different --

5 Q Did the railroad, say the Penn Central, have a
6 manual for what they wanted you to use as far as
7 services?

8 A Well, they did have a manual for all materials
9 used, like for lubricating oils because they
10 were so many different types of grease and oil
11 that were used. Same way with cleaners. There
12 were cleaners for different parts. And they
13 specified that and a part number. Everything
14 had a number. So when you ordered it from the
15 stores department, you would give them the
16 number.

17 Q So you would order by number or by name?

18 A Number and name. That way, it couldn't get too
19 confused with a digit.

20 Q Now, when Conrail took over, did you continue to
21 use for a period of time the same manual or did
22 Conrail provide its own manual?

23 A We continued to use it probably, oh, maybe the
24 first three months until they could get
25 organized and Conrail put out its own standard

- 1 maintenance regulations. In other words, those
2 were the procedures that they wanted taken for
3 maintenance. They put out a parts list for the
4 materials only if it was improved. Conrail
5 really was serious about doing the job right.
- 6 Q So there were some changes in their methods and
7 materials?
- 8 A Yes, there were.
- 9 Q I am going to show you a document that's called
10 "List of Approved Cleaning Materials and
11 Methods."
- 12 A Yeah.
- 13 Q And just ask if you've seen that before, if that
14 looks familiar?
- 15 A I'm sure I have, yeah.
- 16 Q Do you recall seeing that?
- 17 A Yeah, I feel that I did, yeah.
- 18 MR. MASON: Let's mark that as an
19 exhibit.
- 20 (Plaintiff's Exhibit 1 marked
21 for identification.)
- 22 Q Now, do you recall if you ever consulted this,
23 as shop foreman?
- 24 A Oh, I'm sure I must have, um-hmm.
- 25 Q What kind of repairs would you need to do on

1 locomotives? What would be done at the diesel
2 shop at Conrail, the Elkhart yard?

3 A We would maybe replace an air compressor, power
4 assemblies, -- that's head liner and piston --
5 governors.

6 Q What's a governor?

7 A That maintains the speed of the locomotive,
8 actually controls the diesel engine, I should
9 say, not locomotive.

10 Q Is that like a carburetor?

11 A Right. It definitely regulates the amount of
12 fuel that each cylinder is going to get, the
13 speed of the engine.

14 Q So you would replace those?

15 A Sure.

16 I said water pumps, brake rigging, brake
17 shoes, gear cases.

18 Q Were repairs on locomotives ever done outside
19 the shop?

20 A You mean at an outlying point?

21 Q Yes, somewhere else in the yard.

22 A Oh, occasionally, yeah. Sometimes they would
23 break down on the road, you know, and we would
24 have to go make a repair so he could move. And
25 then even in the yard, sometimes we would go out

1 in the yard when they would have problems and
2 make repairs -- inspection and repair.

3 Q In the diesel shop, did you wash down
4 locomotives?

5 A Yes, we did.

6 Q Where would that take place?

7 A That would have taken place -- we had a track
8 run parallel with the diesel shop, right
9 outside, and most of the time when we were
10 unable to wash the locomotives inside, then like
11 in warm weather, summertime, we would wash them
12 outside. If you weren't too busy, you would
13 wash them inside. It was usually handier that
14 way.

15 Q What kind of material was used to wash them
16 down?

17 A We would use a cleaner. Our last cleaning
18 apparatus that we had was a steam-operated
19 outfit. So you used hot water and steam plus a
20 mild detergent-type cleaner that would loosen
21 the oil because they were oily and greasy and to
22 clean them you had to have a pretty good
23 cleaner.

24 That was always a problem on the railroad,
25 getting a cleaner that actually would clean the

1 oil and grease from the parts.

2 Q So let's say in the early years from, say, '69
3 to '75, how were locomotives washed?

4 A The same way with one exception. We used to
5 have a little steam generator to heat with, so
6 we kept that going for hot water as well. We
7 used the hot water and we mixed cleaner and we
8 had an air cleaner -- used air pressure, just
9 pressurized the liquid to pressure clean, to put
10 a pressure on the metal parts. The pressure
11 itself forced it off. It was like some of these
12 cleaners people take their cars through.

13 Q What was the liquid? Do you know what cleaner
14 it was? And I'm talking about '69 to '75.

15 A Like you said, here's the approved list.
16 Collinwood Research Laboratory determined what
17 cleaners worked best. So that's usually the way
18 we always got our material.

19 For a period of time, we got what they
20 called Tysol Glyst from out of Chicago, and they
21 had been approved; in other words, Collinwood
22 says, yes, we can use this.

23 Q What year was that; do you recall?

24 A This was '75 -- '74 or '75.

25 The rest of the time we always had to order

1 in barrels out of Cleveland. That's where our
2 store distributor was. In other words, all our
3 orders went to Cleveland and then they shipped
4 it out. They usually would ship it out in a
5 car. We'd get a car with so many barrels of
6 cleaner and all the parts that we would need.

7 Q Other than the Tysol Glyst, do you remember the
8 names of any of the other cleaners?

9 A Not during those times you mentioned. Now, I'm
10 sure we did use maybe some others that had came
11 from Collinwood, but the only one I remember is
12 the Tysol Glyst. Their salesman was such a nice
13 guy. He used to come from Chicago.

14 Q Was the Tysol Glyst in big drums?

15 A No. I had a tank erected inside the diesel
16 facility, and they brought a tank truck down, --
17 a small tank truck -- and we would get two
18 thousand gallons at a time because that's all I
19 could hold in the tank.

20 Q Was the tank inside the shop?

21 A Yes, it was.

22 Q On the locomotive, is there something called a
23 truck?

24 A Yes.

25 Q What is that?

1 A A truck is the part that the wheel assemblies
2 are held in. In other words, the wheel has a
3 traction motor mounted to the wheel permanently.
4 In other words, and then this is in the jaws of
5 the truck. In other words, the truck has --

6 Q Was it on the under side of the locomotives?

7 A The wheel arrangement was mounted in the trucks.

8 Q Now, as --

9 A A truck assembly included the wheels, the
10 traction motor, brake rigging.

11 Q As part of servicing a locomotive, would the
12 truck be cleaned?

13 A Oh, yes.

14 Q Why would it need to be cleaned?

15 A Sometimes oil would leak on a traction motor and
16 also on the wheels. And you had roller bearing
17 boxes mounted on the axles of each wheel. And
18 occasionally you may have a grease leak or
19 something, a seal leak, and get grease on the
20 wheel. You had to keep the wheels clean. For
21 inspection purposes as well, if a crack
22 developed, you'd want to be able to find it.

23 Q A crack?

24 A In the wheel well.

25 Q What was used to clean the truck and the wheels?

1 A The same cleaner we used for everything. We
2 used one cleaner. It was much simpler to be
3 able to have one cleaner and use it for the
4 engine room, the oil engine, the trucks,
5 anything that needed cleaning, even the floor.
6 To clean, it was much simpler to have one
7 cleaner, you know.

8 Q Was it pretty effective at removing grease?

9 A Fairly. Not like you would like but, with high
10 pressure and hot water, we got by.

11 Q What was this cleaner?

12 A The only one I really can recall is Tysol.

13 Q Even back in '69 you think it was Tysol?

14 A Well, I'm not sure it was Tysol, no. It was
15 whatever we got when we would order cleaning
16 materials, that's what we would get. And my
17 reason was that you had a limited storage area
18 so only have one cleaner, don't get a bunch of
19 barrels sitting around if you could avoid it.
20 We would try to use the most effective cleaner,
21 you know, that seemed to work.

22 Q Do you know if you were going to use a cleaner
23 that, say, was not specifically listed in the
24 manual, could you get permission to do that?

25 A No, could not. They would not order it. Like I

1 say, you would have to order it by number and
2 name and they would say, well, that's not on the
3 approved list, so you couldn't do that. I
4 wasn't authorized to buy it. We used to send
5 suppliers down to Collinwood and take their
6 product there and have it tested. If they would
7 approve it, then we would possibly have been
8 able to order it.

9 Q Let me focus your attention on this Exhibit 1,
10 which is the cleaning manual. I will show you
11 the page with the Use Chart for locomotives. It
12 says "Exterior (Car Body)." Look in the use
13 column where it says "Trucks, Wheels, Tanks &
14 Underframe." And then in the next column it
15 indicates a class.

16 A Yeah. Class 2A, and here's Class 5A.

17 MR. CUNNINGHAM: For the record, what
18 page are we talking about here?

19 MR. MASON: That's sheet number
20 thirteen. Sorry about that.

21 Q So I take it this class refers to a list of
22 approved cleaners; is that right?

23 A Yes.

24 Q Does this look familiar in terms of like a list
25 of cleaners identified by class?

1 MR. CUNNINGHAM: What page, please?

2 MR. MASON: It's not really marked.

3 THE WITNESS: It's got "Sheet No."

4 there, but it doesn't really say.

5 BY MR. MASON:

6 Q Let's go back to the use column for trucks,
7 wheels, tanks, and underframes on sheet number
8 thirteen.

9 Which class of cleaners does it identify
10 for that approved to use for that?

11 A I would say all these were approved. The use
12 chart, yeah, diesel locomotives. They're
13 telling you the solution and strength to mix by.

14 Q But here in the use column it says trucks,
15 wheels, tanks, and underframe.

16 A Right, and this would be the rolling gear of the
17 diesel locomotive. In other words, here it says
18 exterior car body. That's just the outside of
19 it.

20 Q Just let me ask the questions.

21 A I'm sorry.

22 Q That's okay. You're doing fine.

23 What class cleaner does it say to use for
24 trucks?

25 A 5A.

1 Q And what other cleaners?

2 A The interior engine room.

3 Q I'm talking about just the trucks.

4 A Well, that's all it says is 5A, trucks, wheels,
5 tanks and underframe. That means fuel tank is
6 what they're saying.

7 Q But it would appear that there are more cleaners
8 listed for --

9 A Oh, I see what you're saying now. Yes, it does.
10 It shows 6A, 6B, 6C.

11 Q Let's refer back to the front of this manual
12 where it lists the classes. If you take a
13 minute, just look at Class 5 and 6 and see if
14 you recognize any of those names.

15 A Magnuson, I've heard of that. That seems like
16 parts that I've heard of. Magnus. They also
17 made bearings this Magnus Company. Pennwalt,
18 I've heard of them.

19 Q How about --

20 A Monsanto and Hercules.

21 Q How about the cleaners that are listed in the
22 first column, do you recognize any of those?

23 A Well, this Pennwalt one here on Class 7.

24 Q Okay, but we're looking at Class 5 and Class 6
25 right now.

1 A I see. Oh, here's Class 6. The only one I get
2 in Class 6A is Oakite that I recall. I forgot
3 that Oakite. They were an old company even from
4 the steam days.

5 Q You indicated that there was also a need to
6 clean the bearings?

7 A I said leakage on the wheels to clean the
8 wheels. Yeah, that would come under the same
9 cleaner that you would use for tanks, trucks,
10 and wheels.

11 Q Did you clean journal boxes?

12 A On occasion we would, yeah.

13 Q Do you know what was used to do that?

14 A The same cleaner we would use. I tried to use
15 that tank/frame/truck cleaner for everything
16 because that was the most heavy-duty cleaner of
17 all of them. If it did a good job on heavy
18 grease, it would do a better job on light.

19 Q Do you know when that tank was installed?

20 A In the diesel house?

21 Q Yes.

22 A I put it in shortly after I came to Elkhart.

23 Q So in 1969?

24 A 1969 -- no -- I put it in in 1969, yeah.

25 Q So would you characterize that as a degreaser?

1 A The cleaner?

2 Q Yes.

3 A Yeah.

4 Q Was that a flammable material?

5 A No.

6 Q Did it smell strong?

7 A Yeah, some of the cleaners did smell and they

8 actually --

9 Q But the cleaner that was in the tank, did it

10 smell strong?

11 A It wasn't a bad smell. There was never a bad

12 odor to any of the cleaners we used.

13 Q What --

14 A But you could, you know, notice some odor.

15 Q Was this tank filled from fifty-five gallon

16 drums?

17 A At times we did, yeah. We would order it in

18 drums. Then I had a pump and I'd pump it in to

19 unload the barrels. Then we would take them

20 back to the store department, and they would

21 return the barrels back to be refilled.

22 Q Are you familiar with the term "vapor

23 degreaser"?

24 A Vapor?

25 Q Vapor degreaser?

1 A Not offhand, no.

2 Q It would have been something on a locomotive.

3 A How are you associating vapor degreaser?

4 Q I'm just asking if you're familiar with the
5 term.

6 A See, it doesn't ring a bell to me, not that it
7 wouldn't.

8 Q Referring back to Exhibit 1 and sheet number
9 fourteen of Exhibit 1, and ask if you see in the
10 "Use" column the term vapor degreaser? Does
11 that refresh your recollection as to what that's
12 describing?

13 A Well, a vapor, I think of that as like a mist.
14 It doesn't tell me what this means. To me --
15 however, we did have some cleaners that, in the
16 air, when you breathed them, it would just choke
17 you, so we would have to quit using them. The
18 guys would refuse to use them. I couldn't stand
19 to be around them either, so we quit using them.

20 Q Do you know what class cleaner that was?

21 A It would probably have been a Class 5 or a Class
22 7.

23 Q What class cleaner is listed there by "Vapor
24 Degreaser"?

25 A Well, it shows 15B.

1 Q Is there another one that's shown there with
2 that?

3 A Not 15B. Is there another one?

4 Q Is there another cleaner identified for "Vapor
5 Degreaser"? There appears to be two in the
6 column under "Class."

7 A There appears to be. This is for motor and
8 generator, carbon brush holders.

9 Q Let me draw your attention to where it says
10 "Vapor Degreasers." What's the first class
11 cleaner identified there?

12 A Class 15B.

13 Q And is there another one underneath it?

14 A 15D.

15 Q Do either of those --

16 A But it says, "Same as above."

17 Q Does Class 15 cleaner ring a bell?

18 A No, it doesn't.

19 Q Okay. Let me refer you back to the front of
20 this manual where it again lists the classes.
21 Let me direct your attention to the Class 15
22 page and the Class 15 column. Could you
23 indicate for me what Class 15D cleaner is?

24 A Well, Class 15D specifies a cleaner.

25 Q What is Class 15D cleaner? What's the product?

1 A Trichloroethylene.

2 Q Does that refresh your recollection as to
3 whether or not Class 15 cleaners were used or
4 Class 15D cleaners were used?

5 A No. As far as I know, we didn't, but I really
6 can't say for sure. As far as I know, I
7 associate trichloroethylene as more of an
8 electrical cleaner, but they didn't in their
9 cleaner list. So I really don't know. I don't
10 think we did, but possibly at one time we could
11 have used it.

12 Q Well, you had said you think of
13 trichloroethylene as more of an electrical
14 cleaner.

15 Do you recall, then, that trichloroethylene
16 was used at the yard?

17 A No, I can't. The only reason I say that is
18 because in the early days of the diesel
19 locomotives when they first came out, we used
20 carbon tetrachloride to clean generators and
21 motors. And really, an electrical cleaner will
22 degrease anything, it doesn't have to be an
23 electrical part. But it was so -- it tended to
24 -- a little spark would set it off, and they
25 found that it was really not good for electrical

1 parts because there was a lot of arcing as
2 contacts were made, and then it would cause an
3 explosion if there might be vapors around yet or
4 like a gas.

5 Q But in 1969 when you --

6 A No, we did not use it. Myself, I wouldn't want
7 it around because we did not --

8 Q You wouldn't want it around?

9 A Carbon tetrachloride. I made my mind up to that
10 years ago that I wouldn't have it around because
11 you would burn the place down and we didn't have
12 equipment to keep a person from breathing the
13 vapor. I know it made you sick because I used
14 it myself, oh, in the 50s.

15 Q Do you know whether before '69 carbon
16 tetrachloride was used at the Elkhart yard?

17 A I don't believe it was. The New York Central
18 quit using it in -- I think it was about 1959 or
19 1960, that they didn't allow it and they
20 developed -- the New York Central and Collinwood
21 Research Laboratory -- developed a product they
22 called Cleve-Tek.

23 Q What year was this?

24 A I believe it was in about 1959 or '60.

25 And that's what we used from then on Penn

1 Central and New York Central or even after
2 Conrail took over, they were still using Cleve-
3 Tek as an electrical cleaner.

4 Q What kind of electrical work would be done?

5 A Well, all the switching gear for the power
6 control of electrical energy, you know, power
7 contactors and generators and brushes that
8 collected the current from the generator and
9 sent it to the motors.

10 Q What does the term "high voltage cabinet" refer
11 to?

12 A That is a cabinet that housed the reverser.
13 There was a contactor in there that's referred
14 to as a reverser that would switch the
15 locomotive from forward to reverse. There also
16 was a switch, a large cam switch, in there for
17 dynamic braking. Then there was six power
18 contactors in there to distribute the current to
19 the motors. In other words, when they started,
20 they used two and then, after they got up to
21 speed, they used four power contactors.

22 Q Would these cabinets need to be inspected?

23 A Oh, yes, sure.

24 Q And would they need to be cleaned?

25 A Well, rarely. Like I say, they were in a

1 cabinet. That was the idea, to keep them clean.
2 Also they used pressure air in -- to keep a
3 pressure in to blow out. Instead of sucking in,
4 it blew everything out. But on occasion, they
5 would maybe need to be cleaned.

6 Q How would they be cleaned?

7 A Sprayed with an electrical cleaner, Cleve-Tek.

8 Q Let's say in the early years from '69 to '75,
9 what electrical cleaner was used?

10 A Cleve-Tek.

11 Q What did it come in, what kind of container?

12 A We got it in pint containers -- aerosol cans.

13 Q Is that the only form it came in?

14 A Later it was developed and shipped in barrels --
15 somewhat later. But at that time, see, Elkhart
16 was not a major maintenance facility; in other
17 words, not big maintenance.

18 Q Okay, but --

19 A So when it come time for that type of cleaning,
20 the unit usually was shipped to Collinwood.

21 Q How would the electrical cleaner be applied to
22 the cabinet or to the inside of the cabinet, to
23 the electrical parts?

24 A Sprayed out of an aerosol can if you had a place
25 that had to be cleaned.

1 Q Would it be wiped off?

2 A Wiped off with a rag -- the residue that came
3 off. Sometimes maybe just dripped in the bottom
4 of the cabinet and stayed there until it was in
5 for a major repair and then the whole thing
6 would be taken out and cleaned.

7 We didn't do major repairs at Elkhart. We
8 did what came under the category of running
9 repair.

10 Q Let me show you parts of this Exhibit 1. The
11 sheet number is not identified, but it's the
12 third to the last page, and ask you to take a
13 minute and just sort of look that over.

14 Does that look familiar?

15 A It sounds just like carbon tet.

16 Q If you were to not follow a practice that was
17 identified in this manual, how would you get
18 approval to do that?

19 A I couldn't.

20 Q Okay. Well, you're saying that you don't recall
21 following this practice?

22 MR. CUNNINGHAM: Excuse me. Let's
23 identify what we're talking about here by
24 heading. You're referring to "Cleaning
25 Materials Classification Research

1 Department -- Penn Central System Issue 70,
2 right?

3 MR. MASON: Right.

4 MR. CUNNINGHAM: You're asking him
5 questions about that and he's responding to
6 those.

7 A Many times the railroad had instructions but
8 they didn't follow up on them. In other words,
9 a lot of the work we were supposed to do, we
10 never did, never got the parts to even do it.

11 BY MR. MASON:

12 Q Mr. Mellen, I think you may have answered this,
13 but it's somewhat confused.

14 Do you recall seeing this document?

15 A I possibly did, because I tried to read
16 everything they had. I was always interested in
17 anything that was a good cleaner; that would
18 catch my eye.

19 Q Do you recall while you were at the Elkhart yard
20 drums of solvent that were to be used for
21 electrical cleaning?

22 A No, I don't. Like I say, we weren't a major
23 repair so I wouldn't have that around. In other
24 words, it was charged to my budget; and I was a
25 cheapskate. When it came to anything like that,

1 I just didn't have it if I could get around it.
2 I'm not saying that it couldn't have been there
3 but, to my knowledge, I don't recall it being
4 there.

5 Q Okay. I think you said earlier that you would
6 fill out order forms --

7 A Yes.

8 Q (Continuing) -- for cleaners?

9 A Yes.

10 Q Do you remember filling out order forms for
11 electrical cleaners?

12 A Well, like I say, my clerk always ordered all
13 the material.

14 Q Do you remember ordering Class 9 cleaners?

15 A Probably we did.

16 When I ordered, I would just call on the
17 telephone when I ordered anything. As we would
18 get out of different things, the mechanics would
19 come and tell my clerk they were going to need
20 this or need that, and he would make a note.
21 Then when the end of the month came, why, he
22 would order it.

23 Q Do you remember what was used for electrical
24 cleaning after 1975? Was there a change?

25 A The only thing I can think of is for myself that

1 we used was this Cleve-Tek product. I believe I
2 always thought that was all right.

3 Q Do you know what was in Cleve-Tek?

4 A No. It was an aerosol spray can we got and it
5 would clean anything.

6 All I know is it was developed by the
7 Collinwood Research Lab and the railroad
8 developed it. And when I retired, there was a
9 chemical company in Cleveland that makes it
10 under the name of Cleve-Tek.

11 Q What kind --

12 A But what's in it, I really don't know.

13 Q What other uses did you use Cleve-Tek for?

14 A If I got a spot on my clothes, I would clean it
15 right off with that. It's the best dry cleaner
16 you ever saw.

17 Q So it would just take the grease right off?

18 A Yes, it would, just melt it right out. You
19 would spray it and it just washed through.

20 Q Was Cleve-Tek ever put in the tank that you
21 installed in the diesel shop?

22 A No, you couldn't buy that much at that time.
23 Only, like I say, major repair terminals, they
24 could get it for electrical cleaning.

25 Q Did you ever use it to clean the floor or the

1 track in the shop?

2 A No. It would have done a good job, but it
3 evaporated so quickly that it wouldn't have been
4 real suitable for that.

5 Q Did it have some health effects? Would it cause
6 dizziness or --

7 A Well, I never noticed any. I'm not saying that
8 it doesn't, but I never noticed any from it.
9 But I would think you shouldn't spray it in your
10 face, you know.

11 Q Were there complaints about it?

12 A No.

13 As a matter of fact, you had a hard time
14 keeping it just for the very reason that it was
15 a good dry cleaner.

16 Q When you say it was a good dry cleaner, why do
17 you say that?

18 A Well, you would get a spot of lube oil or grease
19 or something on your clothes and you could just
20 put it on a clean rag and wipe it real good and
21 it would take it right out and not leave a spot.

22 Q Do you know if it was used in dry cleaning?

23 A No, I don't, but most railroaders used it for
24 that. That's why we used a lot more of it than
25 probably we should have because most of it, at

1 least half of it, went home.

2 Q In the diesel shop, was there paint stripping
3 done on parts?

4 A No. See, there again, we weren't a major
5 repair, but we did do some painting.

6 Q Did you do some paint stripping?

7 A We did do some painting of locomotives. We'd
8 wash them and touch them up, you know. There
9 are a couple years we had a little extra time
10 that we didn't have too much work so we would
11 try to keep them looking pretty decent.

12 Q Are you familiar with Magnasol?

13 A Yes.

14 Q What is that?

15 A That is the best cleaner that was ever out.

16 Q What did you use it for?

17 A Everything except electrical cleaner, but
18 anything: the floors, diesel locomotives,
19 wheels, anything that was greasy.

20 Q Were you using that in '69?

21 A No. You couldn't buy it. You couldn't get it.

22 Q When did the diesel shop start using it?

23 A Oh, they started using it even in the steam
24 days. Then when the diesel came along, they
25 used it exclusively for all cleaning until about

1 19 -- oh, about 1963 the government and most of
2 the states outlawed the use -- the environmental
3 people -- of Magnasol cleaner because it was not
4 biodegradable. So then the New York Central
5 took it off the market. You weren't allowed to
6 even order it. You couldn't buy it or get it.

7 Q What replaced it in your mind?

8 A What replaced it in my mind was, literally,
9 nothing. Hot water and steam was the only thing
10 that was really effective. After Magnasol
11 nothing was truly effective to loosen grease and
12 oil. They spent an awful lot of money on
13 cleaners, but not --

14 Q What did you use at the diesel shop to clean the
15 floors and clean the track?

16 A A Class 5 or Class 7 cleaner.

17 Q Now, would that come out of the tank in the
18 diesel shop?

19 A Up until about, oh, '75, '76, we kept the tank.
20 Then after that we took the tank out, and from
21 then on we just used drums.

22 Q Do you recall what years you used Class 5 and 7
23 cleaner?

24 A Oh, from '69 on till about '75.

25 Q Why did you stop using them?

1 A When Conrail came along. They experimented with
2 different things and would tell us which one was
3 doing a real good job of cleaning.

4 Q What did Conrail replace Class 5 and Class 7
5 cleaner with?

6 A I don't know. Different shops would just say
7 that this or that new cleaner that's out works
8 real good and we're trying this or we're trying
9 that. And when it got on the approved list and
10 somebody recommended that, that's usually what
11 we'd order.

12 Q Do you recall that the actual cleaning products
13 for the floor changed when Conrail took over?

14 A I think they got the products that were better.

15 Q Do you remember any names?

16 A No, I don't, but, you know, the only names you
17 can think of are names that were around for
18 years.

19 Q Did it come in drums after 1976?

20 A Yeah, it came in drums.

21 Q What color were the drums?

22 A Blue.

23 Q Solid blue drums?

24 A They were usually solid blue. They might be
25 white lettering on them or black lettering or

1 white tops. Usually blue barrels with white on
2 the bottom and top.

3 Q Were there any bands on the drums, any colored
4 banding?

5 A Possibly. It seemed like maybe some of them
6 might have had some bands on there. But most of
7 all of them on the top would tell you, you know,
8 if it was harmful or what it may do or you
9 couldn't breathe it or something like don't
10 breathe the vapors. So I suppose many of them
11 were toxic in some form somewhere.

12 Q Did you do any work on cabooses at the diesel
13 shop?

14 A No.

15 Q Was there any work done on air-conditioning
16 units in the diesel shop?

17 A No.

18 MR. MASON: I have nothing further for
19 right now.

20 CROSS-EXAMINATION

21 BY MR. CUNNINGHAM:

22 Q Mr. Mellen, I'm Pierce Cunningham, and I
23 represent Penn Central, one of your former
24 employers.

25 A Um-hmm.

1 Q The questions I have will be basically follow-
2 ups, I hope to clarify certain areas that Mr.
3 Mason covered.

4 First of all, it's my understanding that
5 you had no connection whatsoever with Elkhart
6 rail yard before 1969; is that correct?

7 A That's not correct.

8 Q What connection did you have with that yard
9 before that date?

10 A I was the assistant general foreman in Chicago
11 in 1963, '64, and '65. That was Englewood
12 Engine House. In the summer when the general
13 foreman at Elkhart took his vacation, I covered
14 the vacation from '64 and '65, those two years.

15 Q So your knowledge, then, of what --

16 A I knew it was a good place and I wanted to be
17 here, yeah.

18 Q But your knowledge of Elkhart is limited, then,
19 to a period of time from 1964 until your
20 retirement in 1983; is that right?

21 A December '83, right. You could say '84.

22 Q And it is also my understanding from your
23 testimony that the majority of your regular
24 full-time activities occurred after January of
25 1969 with the exception of temporary periods at

1 Elkhart during 1964 and 1965; is that right?

2 A That's correct.

3 Q Do you know a man by the name of Claude Brewton?

4 A No, I don't.

5 Q Based on your experience at Elkhart during parts
6 of 1964 and 1965 and during the years 1969 and
7 after, were you made aware of any spills of
8 carbon tetrachloride at the Robert Young Yard?

9 A No, I was not.

10 Q Are you aware of any accidents or spills that
11 you can recall at the Robert Young Yard?

12 A None really that I -- the only one I can
13 remember was we had four locomotives that were
14 on a track ready to leave the terminal. Someone
15 got on board prior to them being ready and
16 leaving for service and opened the throttle.
17 They went down the track and they attained a
18 speed high enough that they derailed, and all
19 four fuel tanks were ruptured. This would have
20 been probably '78 or '79, somewhere in there.
21 But I just can't remember the exact date.

22 Q Was --

23 A Even at the time the instructions that were put
24 out by the E.P.A. was that the amount of
25 spillage, I would think, had to be over ten

1 thousand gallons before you notified the federal
2 government that you had a spillage. But I know
3 because, whatever it was, these tanks held two
4 thousand gallon and approximately eight thousand
5 gallons was spilled. It would more than likely
6 be less because they rarely would be filled to
7 running-over capacity. It would be a little
8 less than that. So I did not have to notify the
9 federal people that we had had this spillage.

10 And there was nothing done about it; in
11 other words, it just spilled into the ground and
12 soaked right in. By the time the locomotives
13 were re-railed, put back on the track and
14 brought back for repair, the fuel disappeared
15 into the ground, naturally.

16 Q That was in 1979; is that your recollection?

17 A Yeah, '78 or '79.

18 Q And you believe that the material that was
19 spilled was diesel fuel?

20 A Oh, yeah, that's all that was spilled. Yeah, it
21 was just diesel fuel.

22 Q Did that spillage result from a collision of two
23 tank cars that derailed?

24 A No. The locomotives themselves derailed, just
25 jumped the track.

1 Q All right. And the contents, the fuel in the
2 locomotives, spilled out?

3 A It ruptured the tanks. The weight of the
4 locomotive on the fuel tank, ruptured the fuel
5 tanks and they burst and the oil spilled.

6 Q Based on your testimony in answering some of Mr.
7 Mason's questions, even though there may not
8 have been as great an awareness as there is
9 today for environmental concerns, shall we say,
10 I take it from that testimony in answers that
11 you gave that there was still, both under Penn
12 Central and under Conrail, a certain care that
13 was exercised with regard to the materials that
14 have been referred to in Exhibit 1; is that
15 right?

16 A Oh, yes, sure. Yes.

17 MR. MASON: I'm going to have to
18 object. Are you asking him a question or
19 are you asking him if that's what his
20 testimony was?

21 BY MR. CUNNINGHAM:

22 Q You understood it?

23 A I thought I did.

24 Q I understood your answer.

25 A Yes, we were always concerned about doing

1 anything to harm the environment, when we became
2 aware of it. Now, in the early days, people
3 didn't really think of the environment at all.

4 Q And it's my understanding that you lived in the
5 Elkhart area at the times that you worked at the
6 Elkhart yard; is that correct?

7 A That's right, I used to. We held meetings. I
8 did with the people working there and I would
9 tell them that anything that contaminates the
10 ground water or our air, it's our air and let's
11 don't kill ourselves; if it takes longer to do
12 the job, that's just too bad.

13 Q And that was at all times that you worked at the
14 Elkhart yard?

15 A That was my way of wanting to operate. I'm not
16 saying it was a hundred percent because you
17 couldn't be there all the time.

18 Q And you instructed your employees that way; is
19 that right?

20 A I surely did, that is right. And if it takes
21 more time, if we have to hire more people, and I
22 knew I was putting my job in jeopardy when I
23 would say that because the name of the game is
24 no people.

25 Q Now, you will recall that the United States

1 government, through Mr. Mason, showed you
2 Plaintiff's Exhibit No. 1, which you were
3 familiar with, right?

4 A Right.

5 Q That manual, if you will, and in order that the
6 record be clear on that point, this is or was,
7 shall we say, a system-wide manual that had to
8 do with approved cleaning materials and methods.
9 Is that your understanding of it?

10 A That's right.

11 Q So that the record be clear, some of the
12 materials that are mentioned in this manual were
13 used at some of the yards and may not have been
14 used at all in Elkhart; is that right?

15 A That's right.

16 Q And it is my understanding from your testimony
17 -- and you were very definite about this -- that
18 the substance known as carbon tetrachloride at
19 no time was used by your employees at Elkhart;
20 is that right?

21 A To the best of my knowledge, that is correct,
22 yes, sir.

23 Q And you are aware, I take it, that carbon
24 tetrachloride had certain toxic effects?

25 A Oh, yes. I've used it myself and I know that it

1 has, yes, sure.

2 Q Let's talk for a minute about the drainage
3 system at the diesel shop in 1969 and
4 thereafter.

5 A Okay.

6 Q It's my understanding that there was, from the
7 very beginning of the Robert Young Yard, a
8 system of, shall we call them, conduits that
9 would carry away the diesel fuel that was used
10 to empty the locomotives of their old diesel
11 fuel; is that right?

12 A The "old diesel fuel"? There was no such thing
13 as old diesel fuel. Diesel fuel is diesel fuel,
14 and it was used -- are you saying waste diesel
15 fuel?

16 MR. ERMILIO: You've confused me as
17 well.

18 BY MR. CUNNINGHAM:

19 Q Well, probably that's because of my own lack of
20 understanding.

21 A Well, diesel fuel was put in the locomotives and
22 used just like you put gasoline in your car.
23 You don't have old gasoline in your car to throw
24 away, you just have gasoline to burn in your
25 car.

1 Q Well, the purpose of the pit and the drains was
2 to catch or collect --

3 A Contaminants.

4 Q (Continuing) -- things that might have dropped
5 otherwise into the ground; is that right?

6 A That's correct. That's what it was for.

7 Q So instead of having a lack of care, the
8 employees and the management, both under Penn
9 Central and Conrail, established a system to
10 avoid that from going into the ground; is that
11 the reason for that?

12 A Well, that's why it was built the way it was
13 built. They knew what was going to take place.
14 They were going to service locomotives, so they
15 built it that way. I'm not saying it was the
16 best built; I'm just saying that's why it was
17 built that way.

18 Q But it was effective, was it not?

19 A As far as I know, it was effective. I tell you
20 -- oh, let's see. The city adopted --

21 MR. MASON: Is there a question here?

22 MR. CUNNINGHAM: Yes, there's a
23 question. I don't like to cut the
24 witnesses off.

25 MR. MASON: I'm just trying to follow

1 this.

2 THE WITNESS: Maybe it would be helpful
3 for what you're wanting to say, that I just
4 wanted to say --

5 MR. MASON: What was your your
6 question?

7 MR. CUNNINGHAM: The question was:
8 what was the purpose of the drainage
9 system? Which is a very important part of
10 this case, Mr. Mason, as you know. I
11 think the contention of the government is
12 that there was a lack of care --

13 MR. MASON: The question --

14 MR. CUNNINGHAM: Let me finish.

15 (Continuing) -- under the Penn Central
16 regime of allowing materials to go into the
17 ground.

18 MR. MASON: We can argue the relevancy
19 later. What I'm --

20 MR. CUNNINGHAM: Let me finish the
21 question I was asking so the record is
22 clear.

23 So therefore, we're asking this witness
24 questions and soliciting answers from him
25 with respect to that issue. Okay.

1 Q The question is: what was the purpose of the
2 underground system that you talked about?

3 A That's what I wanted to tell you about.

4 MR. CUNNINGHAM: Any problem with that?

5 MR. MASON: The question was just lost.

6 MR. CUNNINGHAM: I can't control the
7 witness. He's not my witness. I'm merely
8 asking him questions.

9 THE WITNESS: I just wanted to --

10 MR. MASON: I think the question was
11 lost, and that's why I asked you to
12 rephrase it.

13 MR. CUNNINGHAM: I don't think he was
14 lost at all. I think he is trying to
15 explain to the government what was going on
16 in those days, and he's doing a good job.

17 THE WITNESS: Yeah, and I would. And
18 maybe it would be helpful to you, you know.
19 You talked about those catch basins and
20 ponds.

21 BY MR. CUNNINGHAM:

22 Q Tell us about catch basins and what they did and
23 what they were intended to do and what they did
24 do.

25 A They used a skimmer system to skim off the bil

1 off the top.

2 Well, at one time we had a flood, a rainy
3 season where it rained and like five or six
4 inches of water fell all at one time, and it
5 just flooded everything.

6 Well, this pond, this catch basin, was made
7 so the oil went to the top and the water would
8 run under the dam and the clear water would go
9 out but the oil was trapped.

10 Well, this rain just washed everything
11 right over the dam and out into the St. Joe
12 River. Everybody knew about it.

13 MR. MASON: And across the yard as
14 well?

15 THE WITNESS: Yeah, sure.

16 MR. MASON: So not just the oil, but
17 everything?

18 THE WITNESS: Everything, that's
19 right.

20 MR. MASON: Anything and everything?

21 THE WITNESS: Yeah, anything on the
22 ground surface was just washed away.

23 Well, then they had to rebuild this
24 pond to withstand, you know, a heavy rain.
25 Also at that time, the City of Elkhart

1 annexed, took it into its jurisdiction city
2 limits, and then they --

3 MR. MASON: What years?

4 THE WITNESS: (Continuing) -- monitored
5 our drainage from the diesel terminal, and
6 they had men their three days monitoring
7 whatever was coming out of this separator.
8 They took no exception, and neither did the
9 Indiana E.P.A.

10 BY MR. CUNNINGHAM:

11 Q Well, I think you have now explained the purpose
12 of the system.

13 In your view from what you saw, was it an
14 effective system?

15 A It worked more effective than I had dreamed,
16 really.

17 Q Now, let's talk for a minute about Collinwood
18 Research Labs. I think the words "Collinwood,
19 Ohio" are contained on Plaintiff's Deposition
20 Exhibit 1.

21 What was Collinwood Research Lab?

22 A Collinwood Research Lab tested all of the
23 materials and the equipment that was used on the
24 railroad. In other words, everything that was
25 used, before it could be used, had to be

1 approved by the Collinwood Research Lab or you
2 weren't authorized to order it or buy it.

3 Q What was your understanding of why they had to
4 approve materials under the Penn Central days?

5 A So the material you ordered would be safe to
6 use. That was my opinion.

7 Q Now, let's get a time frame for this with
8 respect to the Elkhart yard.

9 Collinwood would have to approve cleaning
10 materials at the times that you would order them
11 at the Elkhart yard; is that correct?

12 A That's right.

13 Q And that would be from 1964 or '65 right on
14 through until 1983?

15 A Right.

16 Q Was Collinwood Research Lab an independent lab
17 unassociated with the railroad?

18 A It was associated with the railroad. The New
19 York Central started it, then it remained when
20 Penn Central was there, and then also, as far as
21 I know, when Conrail came into existence it was
22 still there and doing its thing.

23 Q And they had chemists associated with that
24 office?

25 A Oh, yes, there were.

1 Q There were doctors there?

2 A Possibly. Yeah, I'm sure there were. There
3 were graduates from -- I heard them say some of
4 the people were graduates from Penn State
5 University because they also did a lot of work
6 on lubricating oils and greases and what not as
7 well as all products that the railroad used.

8 MR. MASON: I'm going to object because
9 most of this is hearsay.

10 THE WITNESS: I didn't mean to --

11 MR. MASON: That's all right. I just
12 needed to state that.

13 THE WITNESS: But I really wasn't
14 acquainted with any of those people.

15 BY MR. CUNNINGHAM:

16 Q And it's my understanding that at no time did
17 you or any of your employees use any materials
18 that were not approved by Collinwood Research
19 Labs; is that right?

20 A As far as I know, that's the way the procedure
21 had to go. We didn't have authority to buy
22 anything locally after I came because -- well,
23 we could have bought locally up until I think it
24 was '72. But the man ahead of me had run up
25 such debts that nobody would give the railroad

1 credit; you couldn't buy anything. I couldn't
2 get a nut or a bolt or anything because we were
3 bankrupt, unless I paid for it out of my own
4 pocket.

5 Q With respect to the cleaning of electrical parts
6 and your reference to cabinets, it's my
7 understanding that, for the most part, these
8 electrical parts were cleaned by blowing them
9 clean rather than using a cleaner on them; is
10 that right?

11 A That is correct. Usually they only accumulated
12 dust, so air pressure was enough to blow off the
13 dust.

14 Q So that it was a rare situation when the aerosol
15 cans would be used to clean electrical parts?

16 A Well, that's why they could be used because
17 there wouldn't be a big area to be cleaned, so
18 you could use a pint spray can, an aerosol can.

19 Q When those cans were used, there was care used
20 that they didn't come in contact with the
21 ground; is that right?

22 A Well, this type of cleaner evaporated so fast.
23 In other words, they would spray it on and, as
24 it would run off, they would wipe it up with a
25 rag.

1 Q So you never saw any of that go into the ground,
2 did you?

3 A Well, no.

4 The rags were then thrown into barrels and
5 they were shipped back to be cleaned and used
6 again.

7 Q So there was a regular system set up to avoid
8 these chemicals coming into contact with the
9 ground; is that right?

10 A Well, the intent was there, yeah. You've got to
11 know in a normal railroad operation a certain
12 amount of everything is going on all the time.

13 Q And you indicated that a substance known as
14 Cleve-Tek began to be used. I can't recall
15 exactly when you said that began to be used. Do
16 you recall that?

17 A In the early 60s, probably 1960.

18 Q It's my understanding that you were familiar
19 with that substance and that it never caused any
20 ill effects health-wise to anybody that you
21 worked with; is that right?

22 A That is right.

23 Q And that there were never any complaints by your
24 employees regarding that substance?

25 A No.

1 Q Then the question came up about Magnasol, which
2 you were familiar with.

3 A Yes.

4 Q And you commented that it was a good cleaning
5 agent; is that correct?

6 A Oh, the best.

7 Q Degreaser?

8 A The best.

9 Q And it's further my understanding, and correct
10 me if I'm wrong, that at no time was that
11 substance used, to your knowledge, at Elkhart;
12 is that correct?

13 A That is correct.

14 Q It is also my understanding that a general
15 cleaner was used in a tank at the diesel shop
16 and that later that was changed. But that
17 cleaning material that was in the tank was used
18 between 1969 and 1975 and that following 1975,
19 after Conrail took ownership in the later days,
20 different substances were used.

21 A Improvements.

22 Q But what that difference was you can't really
23 tell us; is that right?

24 A No.

25 But I do know that a lot of effort was put

1 out by Conrail to run a railroad and do it
2 right.

3 Q And likewise, Penn Central used care?

4 A Yeah, even the New York Central as we became
5 aware of what was happening.

6 MR. CUNNINGHAM: I don't think I have
7 any further questions.

8 MR. ERMILIO: I do have a couple
9 questions.

10 CROSS-EXAMINATION

11 BY MR. ERMILIO:

12 Q I'm Jim Ermilio. I represent Conrail.

13 A I remember talking to you on the phone, didn't
14 I.

15 Q Yes.

16 A You want to ask questions?

17 Q Yes. These will be follow-up questions. If
18 you'll give me one minute, I'll be right with
19 you.

20 (Pause in the proceedings.)

21 Q During the time that you were at the Elkhart
22 yard with Penn Central as the owner -- and I
23 know you mentioned you were there during the
24 summer in '64 and '65.

25 A That would have been New York Central.

- 1 Q And then '69 to early '76, did you have
2 authority to order any cleaners from any sources
3 other than the stores department?
- 4 A I did, and that was the Tysol Glyst that I had
5 mentioned before. It came from Chicago. They
6 had been approved by Collinwood Research Lab and
7 they actually brought it down in truck loads
8 where we would get two thousand gallons at a
9 time. And the salesman's name was Bob Davis.
10 One time somebody asked me that and I just
11 remembered it.
- 12 Q You mentioned that locomotives were washed off
13 both inside and outside of the diesel shop.
- 14 A Right.
- 15 Q During your time at the Elkhart yard, what did
16 you use for washing the locomotives?
- 17 A A general purpose cleaner, one that -- there
18 were several categories, and we always tried to
19 pick the strongest cleaner that we could get
20 that was approved.
- 21 Q We had discussed the cleaner at length.
- 22 A Well, Class 7 and Class 5 usually the cleaner
23 came in that category.
- 24 Q I believe you said earlier that those were no
25 longer used once Conrail came in?

1 A Well, Conrail changed their whole numbering
2 system, ordering system, and many of the
3 cleaners were replaced by others. But I'm not
4 so sure that they didn't keep the classes, but
5 they did change the makeup of them. They were
6 improved.

7 Q Improved in what sense?

8 A Did a better job of cleaning and also they were
9 -- we were told, you know, that they were
10 environmentally safe and that they weren't toxic
11 to the people working with them and that type of
12 thing. Or if they would be toxic in some way, I
13 think they would tell us to use respirators or
14 whatever, you know.

15 Q Do you remember carbon tetrachloride being used
16 out at the Elkhart yard at any time?

17 A No, I do not.

18 Q How about Magnasol?

19 A I don't remember that being used there either.
20 I think Indiana was one of the first states that
21 barred the use of it and then Illinois was next.
22 New York was the last state to bar it.

23 Q Are you familiar with trichloroethylene, TCE?

24 A I don't think so.

25 Q So you wouldn't be familiar with the smell of

1 TCE?

2 A Well, I would imagine it would be offensive or
3 pungent in some manner.

4 Q Why would you imagine that?

5 A Well, I associate it with carbon tetrachloride.
6 That's the only thing.

7 MR. CUNNINGHAM: I object to that
8 because he just doesn't know. That's
9 speculation.

10 THE WITNESS: Yeah, I shouldn't have
11 said that.

12 MR. CUNNINGHAM: That's all right.

13 BY MR. ERMILIO:

14 Q Do you know what a vapor degreaser is?

15 A I said "no" before because I didn't really
16 associate it.

17 Q That's fine.

18 Do you know whether there was a vapor
19 degreaser at the Elkhart yard?

20 A I really don't know.

21 Q You're not familiar or you don't remember one?

22 A I don't feel I'm familiar, no.

23 Q Are you familiar with the name J.N. McWiggin?

24 A J.N. McWiggin, wasn't he an official on the
25 railroad?

1 Q Okay. Do you remember getting memoranda from
2 Mr. McWiggin regarding use of cleaners?

3 A I don't. But as you're saying it now, I think
4 maybe he was the head of the purchasing
5 department. Am I right? Was he in the
6 purchasing department?

7 Q He was actually the chief mechanical officer.

8 A Well, I should definitely have known him and I
9 don't. That shows my memory's not too good.

10 Q If you got a memorandum instructing you to cease
11 the use of a particular cleaner "effective
12 immediately," what would you do?

13 A Exactly what it said. The easiest thing to do
14 is what you're told. It's when you have to
15 think that it's hard. I would have done just
16 that: taken it right back and that's it.

17 Q Would you use what you had left over?

18 A No. If I was told to quit using it, I would
19 have quit. If it wasn't good enough for them,
20 it wasn't good enough for me.

21 Q What would you do with any extra that you had
22 left over?

23 A Return it to the stores department.

24 Q Do you know what they would do with it?

25 A No, that's not my job. I would assume they

1 would have sent it right back to the
2 distributor, which would have been Collinwood.

3 Q I want to clarify one thing you discussed
4 earlier and I may have misunderstood. You were
5 discussing Class 15D cleaners with Mr. Mason.

6 I believe you said you weren't familiar
7 with Class 15D cleaners; is that right?

8 A I felt that I was not.

9 Q Do you remember using Class 15D cleaners?

10 A When you say 15D, it doesn't ring a bell. I
11 don't recall that.

12 Q He identified on Exhibit 1, Class 15D cleaner as
13 trichlorethylene.

14 A And I think I said we didn't use it. As far as
15 I know, we didn't use it.

16 Q You also mentioned earlier that the floor of the
17 diesel shop was cleaned with a Class 5 or Class
18 7 cleaner, from about 1969 to 1975; is that
19 right?

20 A Right.

21 Q And then what did you use after 1975 to clean
22 the floor?

23 A It might well have been the very same thing, but
24 I'm just not too sure. I just know once Conrail
25 took over, we were -- we had a much greater

1 opportunity for different products.

2 Q So you may have used something different?

3 A May have.

4 Q Let me --

5 A They would tell us that this works good or this
6 works good or this gets some of it.

7 Q But you do specifically remember using Class 5
8 or Class 7 cleaners on the floor of the diesel
9 shop from 1969 to 1975?

10 A Yes. It seems to me that's about the only
11 classes we used were Class 5 and Class 7.

12 Q And after 1975, you don't remember exactly what
13 was used?

14 A No, I don't. Could have been the very same
15 thing.

16 Q Could have been anything, you just don't
17 remember?

18 A Right.

19 Q You mentioned earlier that Conrail experimented
20 with new cleaners, and you were discussing the
21 drums that they came in, and Mr. Mason asked you
22 about blue drums, and you were discussing the
23 sold blue drums with white and black lettering
24 and white tops. Then you said at the end that
25 you supposed that many of those cleaners were

1 toxic in some form.

2 What do you mean by that?

3 A Well, to breathe -- when you're spraying them,
4 the vapors coming off of them possibly could
5 have been toxic. I'm not saying they were. I
6 just mean -- I don't recall but only one time
7 that we had a cleaner that, oh, just made
8 everybody choke, cough. You would be coughing.
9 And I know one time I coughed for maybe two
10 months.

11 Q So in other words, you're equating toxicity with
12 any kind of effect it would have on a person --
13 on your eyes or smell bad?

14 A Right.

15 Q Or cause any --

16 A Well, I don't recall anything smelling too bad.

17 Q Do you remember at the time that Conrail came
18 into existence, do you remember getting a new
19 list of approved cleaners?

20 A Shortly after they came into existence, they
21 did. The ordering procedures and billing and
22 everything was changed -- maintenance practices,
23 cleaning, just everything. They rewrote the
24 book. They did follow along about similar to
25 Penn Central. You know, we had government money

1 then and people that were strictly interested in
2 running a railroad like it should be run and
3 nothing else.

4 MR. ERMILIO: I have no further
5 questions right no.

6 REDIRECT EXAMINATION

7 BY MR. MASON:

8 Q Mr. Mellen, in your answer to Mr. Cunningham's
9 question regarding the drainage system, you
10 stated that the pond overran, correct?

11 A Um-hmm.

12 Q Do you recall what year that happened?

13 A Well, possibly.

14 Q Did it happen between '69 and '75?

15 A Oh, maybe even after that. Maybe it was when --
16 it could have been '75 or '77, possibly then,
17 somewhere in there. Yeah, '75 or '77, somewhere
18 in there.

19 And the reason I remember the incident so
20 well is because we used to use in the cooling
21 system a dye. It was a vegetable dye, but at
22 that time nobody knew that. It was used to find
23 leaks. Well, this dye is a green color, and
24 you've seen it many times in other places.
25 Well, the state -- that was some of the stuff

1 that we had dumped and it got into the ground
2 water and was floating down the St. Joe River.
3 And the environmental people were there and they
4 wanted to know what that dye was, and I told
5 them, and they had me all nervous because I
6 thought I'd poisoned everything.

7 Q Where was the dye dumped?

8 A In the yard. Like I say, the rain just washed
9 it right down into the pump.

10 Q Where in the yard?

11 A Outside the diesel terminal. We were getting
12 rid of it.

13 Q Just dumped it on the ground?

14 A Yeah.

15 Q And you said some other stuff was dumped with
16 it?

17 A No, just that, just that green compound.

18 They weren't going to use it anymore and
19 told us we didn't need it, to just do whatever
20 we wanted to with it, so we dumped it.

21 Anyway, they wanted to know what it was.
22 And when they checked it out, they found out it
23 was vegetable dye, not harmful to nothing. And
24 even the pollution people use it today.

25 Q The dye, though, came out of the pond?

1 A Yeah, right off over the top, washed right in
2 the river. See, it's so strong that a little
3 dab will do you.

4 Q And that was just during a heavy rain?

5 A Oh, gosh, I'll say it's a heavy rain. Like I
6 say, it was five or six inches all at once.

7 Q So before '75, would a heavy rain -- do you
8 recall any heavy rains that caused --

9 A Oh, I'm sure within every two or three years you
10 have downpours, you know, you're bound to have.
11 But I don't know of any ever been reported where
12 we polluted the river, but this year it was in
13 the newspapers and everybody knew it.

14 Q But did you say that you recall that dye showing
15 up in the ground water?

16 A It showed up in the river, floating on the
17 surface of the river. And the state
18 environmental man -- and that's why I know it
19 must have been around '77, because they weren't
20 even in existence prior, I don't think.

21 Q Was any of that dye poured into the pit?

22 A Oh, yeah.

23 Q In the same incident?

24 A When we drained it out of the radiator. See, we
25 put in 275 gallons. And when we drained it, we

1 just drained it out.

2 Q Right in the pit?

3 A Right into the pit, yeah.

4 Q And again, in the pit there would have been
5 other materials that would have been left over
6 from operations within the diesel house; is that
7 right?

8 A Yeah, whatever: trash, papers, dirt.

9 Q You were talking at length about this Collinwood
10 facility, this research facility, and approvals
11 they gave.

12 If they gave approval to a material and it
13 was one that was to be used for a certain
14 process, I think you said you would use it,
15 right?

16 A Yeah, they identified it in those books, right.

17 Q So you would accept their judgement that it was
18 safe?

19 A Oh, yeah, right.

20 Q So if the manual would have indicated to use,
21 say, trichloroethylene, would you use it?

22 A If I needed it, yes, sure, I would have.

23 Q Do you recall who made the compound called
24 Cleve-Tek; what company?

25 A The company name was Cleve-Tek.

- 1 Q That was the company?
- 2 A Um-hmm. There are in Cleveland, Ohio, and they
3 are located very near the Collinwood development
4 terminal.
- 5 Q But you just referred to the compound as Clevel-
6 Tek; is that right?
- 7 A Well, yeah, I did because that's the name that
8 they put on the can -- Cleve-Tek.
- 9 Q Have you ever heard of a company called Pro
10 Pack?
- 11 A No, I don't think so.
- 12 Q Do you know --
- 13 A Possibly, but, you know, it doesn't ring a bell.
- 14 Q Do you know whether or not you used Inhibisol?
15 Does that sound familiar?
- 16 A No.
- 17 Q Do you recall whether Stoddard Solvent was used
18 in the diesel shop?
- 19 A I have heard of Stoddard Solvent. What it was
20 used for, I don't know.
- 21 Q You don't know, or it wasn't?
- 22 A Well, I don't know what I would have used it
23 for.
- 24 Q Now --
- 25 A I think they used that in bigger terminals for

1 A Just cleaning, I would imagine.

2 Q At the diesel shop, were there any cracks in the
3 floor?

4 A Oh, sure, just like a sidewalk.

5 Q Do you recall any spills of cleaning material or
6 any material within the diesel shop?

7 A I would say it would be literally impossible to
8 have not spilled almost anything that was in and
9 around there. Just anything that was in a
10 diesel shop, I'm sure was spilled at least ten
11 times.

12 Q Do you recall any particular incidences?

13 A Major spillage?

14 Q Or like a drum that was knocked over?

15 A Yeah, yeah, they backed a lift truck in a barrel
16 one time and we spilled cleaner, and it run
17 right in the pit and right on out to the
18 separator. There is just no way to save it, you
19 know, once it's spilled.

20 That's why I say, you know, the railroad
21 has been operating all these years. And it's
22 just any kind of contaminant that you can think
23 of, you know, has been spilled from New York to
24 San Francisco.

25 Q So if there was an accident or a spill within

1 the diesel shop, would it just gradually run
2 into the pit or would you hose it or what would
3 you do?

4 A It would just depended. If it fell and you
5 didn't have anybody to get a hose and hose it
6 down, you'd just let it stay there until later
7 or took care of itself.

8 The railroad didn't have many employees.
9 That was the biggest problem you had, trying to
10 do something with nothing.

11 Q Do you remember when you talked about this
12 overhead tank in the diesel shop?

13 A Well, it was upright. I had it sitting in the
14 corner of the diesel shop.

15 Q And you have stated that was removed?

16 A Yeah, we took that about in about, like I say,
17 '75, '76.

18 Q Do you recall whether there were any contents in
19 the tank when it was removed?

20 A No. We had emptied it out; used it up.

21 I used to have an air pressure system with
22 hot water and I had an automatic feed -- I even
23 had a -- well, just an automatic feed is all you
24 would be interested in -- where so much cleaner
25 would go in every time the valve would open, a

1 ball valve opened, it would allow the water to
2 keep the tank full and to keep it hot and also
3 allowed cleaner to come in at the same time.

4 Q After 1975, do you remember there being black-
5 colored drums in the diesel shop?

6 A There were probably some black drums, yeah.

7 Q And do you recall any green drums?

8 A Probably. See, we used to get governor oil, air
9 compressor oil, journal oil. And every one came
10 in a different barrel --

11 Q But the --

12 A (Continuing) -- so I could identify them.

13 Q The barrels were color coded; is that right?

14 A Many of them, yeah.

15 Q Do you remember receiving green drums?

16 A I really can't, to tell you the truth. The only
17 ones I really remember are black and blue, but
18 you wouldn't know that there are red ones, green
19 ones, yellow ones, or whatever. There probably
20 was.

21 Q Let me ask again about carbon tet and Magnasol.

22 Do you remember being consulted prior to
23 the deposition about Conrail regarding those
24 products, questions about whether they were used
25 at the rail yard? Do you remember that?

1 A By Conrail?

2 Q Yes.

3 A I think maybe he might have called me and asked
4 me.

5 THE WITNESS: Did you call me?

6 BY MR. MASON:

7 Q Did you talk to Mr. Ermilio?

8 THE WITNESS: Is that you?

9 MR. ERMILIO: Yes, sir, that's me.

10 MR. CUNNINGHAM: I'm going to object to
11 this. He's answered this about four
12 different ways: Jim Ermilio asked him, I
13 asked him. And he says they never used
14 carbon tet at Elkhart. We're getting into
15 a lot of repetition here.

16 BY MR. MASON:

17 Q Do you recall if that conversation was in
18 regards --

19 MR. CUNNINGHAM: Whether Jim Ermilio
20 talked to him or not, his answers were that
21 we never used them at Elkhart.

22 THE WITNESS: I wouldn't have changed
23 my answer from what I told him. Of course,
24 you don't have to believe that. I have
25 nothing to gain or to loose. I'm only here

1 to answer your questions.

2 MR. CUNNINGHAM: I don't think anybody
3 is suggesting that.

4 THE WITNESS: I wouldn't want to throw
5 you for a minute.

6 MR. MASON: Oh, I know that.

7 MR. CUNNINGHAM: Let's not go over the
8 same ground that we've already covered.
9 That's my objection.

10 BY MR. MASON:

11 Q Let me just clarify this one final time.

12 If someone attributed to you the statement,
13 Carbon tet and Magnasol were used at the rail
14 yard, at times, prior to 1976 --

15 A Somebody did say that?

16 MR. CUNNINGHAM: What are you trying to
17 do, suggest that he --

18 MR. MASON: Well, the interrogatory
19 identifies --

20 THE WITNESS: Well, it could have even
21 have happened. I didn't order it. We
22 didn't order it in --

23 MR. CUNNINGHAM: He's answered the
24 question.

25 THE WITNESS: (Continuing) -- to my

1 knowledge, and I was in charge of that
2 terminal. I would not sanction the use of
3 it. Because if you've ever had a place
4 burn down under you, you know they'd throw
5 you out in a hurry. That's the quickest
6 way to loose your job I can think of. No,
7 I wouldn't have used it for nothing,
8 absolutely. But I'm not saying that
9 somebody couldn't have. I'm just saying I
10 wouldn't authorize it or I wouldn't have
11 let it is in there knowingly. If there was
12 any used there, I didn't have nothing to do
13 with it.

14 MR. MASON: Okay. No questions.

15 MR. CUNNINGHAM: Just a few more.

16 RECROSS-EXAMINATION

17 BY MR. CUNNINGHAM:

18 Q This overrun Mr. Mason just asked you about.

19 A Um-hmm.

20 Q That didn't happen under Penn Central's
21 ownership, did it?

22 MR. ERMILIO: Objection.

23 A Possibly. I can't remember the dates, but it
24 was in the newspaper. That's general news;
25 that's not me telling it.

1 BY MR. CUNNINGHAM:

2 Q The City of Elkhart investigated that, did they?

3 A Oh, yes, and also the Indiana Department of
4 Environmental Management. They had a person
5 there, too.

6 Q And your best recollection is that it happened
7 in '77 or thereafter; is that right?

8 A Well, the only --

9 MR. ERMILIO: Objection.

10 Mischaracterization of his prior testimony..

11 He said '75 or '77.

12 THE WITNESS: That's what I said.

13 BY MR. CUNNINGHAM:

14 Q Well, the record will speak for itself.

15 A Well, the reason I said that is because I didn't
16 think Indiana had any people checking the
17 environment and checking the waterways until
18 then. They may have, but I wasn't aware it
19 until after that time.

20 Q You don't know then when it happened; is that
21 right?

22 A No, I don't. Like I say, it was published in
23 the newspaper.

24 Q I think we have prior testimony from other
25 Conrail employees that it happened under their

1 ownership. But you don't recall; is that right?

2 A No, I don't.

3 Q You never used TCE to your knowledge, did you?

4 A No.

5 Q Nor did anyone else at Elkhart, to your
6 knowledge, correct?

7 A Not to my knowledge, no.

8 Q And to your knowledge, nobody used Stoddard
9 Solvent?

10 A No, but I have heard of that. If you tell me
11 what you used it for --

12 Q But my question is whether you know of anyone
13 using it or not.

14 A No, I don't.

15 Q And your answer is?

16 A No.

17 Q You don't know?

18 A That's right.

19 Q And the question was asked about cracks in the
20 floor at the diesel shop.

21 A Right.

22 Q And I guess the suggestion there is that some of
23 the solvent went into the ground.

24 Did you see anything go into the ground?

25 A Well, I didn't personally monitor it.

1 Q That's the question; that's the answer.

2 You indicated, I think, that the Elkhart
3 yard is not a place for major repairs; isn't
4 that right?

5 A That's right.

6 Q Now, if a tank car had a big hole in it, three
7 or four feet wide, that would not be repaired at
8 Elkhart, would it?

9 A Well, now, see, you're asking a question --

10 Q Or do you know that?

11 A I don't know.

12 Q That's all I wanted to know.

13 A I was the locomotive department.

14 Q Did you do know that Elkhart is not a major
15 repair yard?

16 A For locomotives, no.

17 MR. CUNNINGHAM: That's all the
18 questions I have. Thank you very much for
19 your helpfulness.

20 MR. ERMILIO: I have a few questions if
21 you don't mind.

22 THE WITNESS: I don't mind.

23 RECROSS-EXAMINATION

24 BY MR. ERMILIO:

25 Q I'm sorry to have to go over this again but I

1 don't understand some of what was said here
2 today and I want to clear it up.

3 Going back to the Magnasol, you discussed
4 it earlier today as the best cleaner you ever
5 used.

6 A I think so. It was the best in my time.

7 Q When did you use it?

8 A Oh, in -- I started working in 1941. The
9 railroad industry was using Magnasol at that
10 time. And they continued to use it, as far as I
11 know, up until about 1959. Then the states were
12 outlawing the use of it because they claimed
13 that once it got into the ground it stayed in
14 the ground. So then New York Central just put
15 out instructions to the purchasing department
16 that they would not furnish it, wouldn't buy it,
17 and you couldn't get it. So that ended that.

18 Q According to my notes without having to go back
19 on the record here, and correct me if I'm wrong,
20 you said it was outlawed by the states and maybe
21 the federal government in 1963.

22 A Yeah, I wasn't sure about the federal.

23 Q About 1963, is that the right year?

24 A I would say --

25 MR. CUNNINGHAM: I object to this.

1 He's already testified that it was never
2 used at Elkhart. The issue is whether it
3 was ever used at Elkhart or not, and it
4 wasn't. If it was used at rail yards
5 elsewhere, fine.

6 THE WITNESS: Possibly it could have
7 been, yeah. Or do you want to know if the
8 New York Central used Magnasol after 1960?

9 BY MR. ERMILIO:

10 Q No. I would like to know whether New York
11 Central used Magnasol prior to the time it was
12 banned and whether that was in '63, give or take
13 a year?

14 MR. CUNNINGHAM: Jim, I object here.

15 MR. ERMILIO: Pierce, you've got your
16 objection on the record. I'm entitled to
17 ask these questions. If you have to
18 object, fine, provided you don't try to
19 supply the witness with the answers.

20 MR. CUNNINGHAM: I'm not trying to
21 supply anyone with anything.

22 MR. ERMILIO: You have your objection
23 on the record. There is no reason to
24 continually --

25 MR. CUNNINGHAM: You're the one who

1 objected about the government asking all of
2 these questions, Jim.

3 MR. ERMILIO: The reason I'm asking
4 these questions is because I believe the
5 record is unclear and I want to clear the
6 matter up.

7 THE WITNESS: I would just like to say
8 that to my knowledge after 1963 Magnasol
9 was not used by the New York Central.

10 BY MR. ERMILIO:

11 Q Thank you. I think you've made that clear.

12 Did they use it prior to 1963?

13 A Oh, prior to '63?

14 Q Yes. Was Magnasol used prior to 1963 by the New
15 York Central?

16 A At some locations, yes.

17 Q Was it used as a cleaner for locomotives,
18 floors?

19 A Right, locomotives, floors, trucks, everything.
20 It was a general purpose cleaner that did it
21 all.

22 Q Okay.

23 A And it was a good cleaner.

24 Q Do you know for a fact whether it was used by
25 New York Central prior to 1963 at Elkhart?

1 A Well, I wasn't here so I couldn't say, but I
2 would say probably it was. I would say it
3 probably was.

4 Q Why would you say that?

5 MR. CUNNINGHAM: I move to strike the
6 answer.

7 A Because it was a general purpose cleaner and
8 everybody would have wanted to use it as long as
9 they were able to get it. But I do know this:
10 I came to Elkhart in '64 for the first time --
11 but I had been here in '63 as a visitor -- and
12 they weren't allowed to use it.

13 BY MR. ERMILIO:

14 Q I understand.

15 A And I know we weren't allowed to use it in
16 Illinois because they had forbid it in 1963, the
17 same as in Indiana.

18 Q So you're saying it was banned in approximately
19 1963?

20 A Right.

21 Q After that it was no longer used by the New York
22 Central?

23 A Right.

24 Q Prior to that, though, it was used by New York
25 Central and you said it was used everywhere by

1 the railroad industry, correct?

2 A Extensively, yeah. All railroads used it as
3 well as the New York Central, yeah. It was the
4 best cleaner there ever was. There is no doubt
5 about it.

6 Q And you said probably it was used at Elkhart
7 prior to 1963?

8 A Well, I would think so.

9 Q Any reason why it wouldn't have been used at
10 Elkhart?

11 A That's why I say I would have to assume it was
12 because it was available and it was the best
13 cleaner there was. See, it had no harm on the
14 products; in other words, paint surfaces or
15 concrete surfaces or anything. It didn't seem
16 to bother anything except the environment, I
17 guess.

18 Q Leaving Magnasol aside, stepping over to carbon
19 tetrachloride, you said that was used for some
20 period of time?

21 A Yes, it was.

22 Q Can you tell me when it was used?

23 A It was used up until about 1960, not
24 extensively, because many places, like I say,
25 operated on a budget. They would use only -- in

1 an emergency in a bad traction motor with oil or
2 a generator that got saturated through some way,
3 the only way you could clean it at that time
4 would have been to spray carbon tetrachloride on
5 it.

6 Q You mentioned earlier in response to questions
7 from Mr. Mason that you used carbon
8 tetrachloride while employed by New York
9 Central; is that correct?

10 A I did myself.

11 Q Until about 1960?

12 A Right, 1959 or 1960.

13 Q And it was more or less replaced by Cleve-Tek?

14 A Cleve-Tek.

15 Q And prior to 1960, what was carbon tetrachloride
16 used for?

17 A Electrical cleaner.

18 Q In what form?

19 A It came by the barrels. Then we had spraying
20 devices, you know, you could empty so much out
21 of a barrel.

22 Q What size barrels were they?

23 A Fifty-five gallon drum.

24 Q Was this used in the same manner as you've
25 mentioned Magnasol was used; was it used

1 throughout the railroad industry?

2 A Yeah, all railroads used it.

3 Q Used the carbon tet?

4 A Yes, they did.

5 Q Okay. Do you know whether carbon tet was used
6 at the Elkhart rail yard by the New York Central
7 during the New York Central time period prior to
8 1960?

9 MR. CUNNINGHAM: Objection, objection.

10 He said he doesn't know that.

11 A I'd say no, because the engine house facility
12 wasn't opened until 1957 or '58. I think that's
13 the year that they built the Robert Young Yard.
14 I think it was 1958.

15 BY MR. ERMILIO:

16 Q Okay.

17 A Possibly '57. And they weren't -- at that time,
18 they made very few repairs at Elkhart. Almost
19 all the maintenance was sent to Collinwood. All
20 they would do is minor running repair in the
21 early days. If it was more serious than that,
22 they went it on to Collinwood.

23 Q And you said that carbon tet was an electrical
24 cleaner?

25 A Right.

1 Q Was there need for electrical cleaners in a
2 diesel shop such as Elkhart?

3 A No, not so much Elkhart, but like Cleveland,
4 they would need it. A big major repair point
5 would use a lot of it.

6 Q But Cleve-Tek is the replacement for carbon tet,
7 you said, as an electrical cleaner?

8 A As an electrical cleaner around the railroad,
9 yeah.

10 Q Did you use Cleve-Tek when arrived at Elkhart?

11 A Yes, we did.

12 Q For what?

13 A Electrical cleaning. But mostly -- I'm going to
14 tell you the truth -- it was available, and we
15 all ordered it because there was so many
16 personal uses for it.

17 Q All right. But it was used as an electrical
18 cleaner?

19 A That's right.

20 Q At the diesel shop?

21 A Yeah.

22 Q Before Cleve-Tek was available, would there have
23 been electrical cleaning that would have had to
24 have been done at Elkhart?

25 A Before Cleve-Tek was available?

1 Q I'm sorry. That was a confusing question.

2 A No, I would say that Elkhart didn't have that.

3 In other words, if there was a need for it, they
4 would have just sent the locomotives to
5 Collinwood and let them clean it there because
6 they had the material, the facility, and the
7 equipment; Elkhart didn't.

8 Even then, you know, they knew that you
9 must wear a respirator or you were going to get
10 drunk. Some people, depending on their state of
11 health, could have been seriously injured or
12 maybe even die from the exposure to it. It was
13 something you really wanted to be careful with
14 when you used it.

15 Q Do you remember whether under Penn Central, -- I
16 believe Penn Central merged with New York
17 Central in '68.

18 A That's right, February.

19 Q Do you remember under Penn Central from '68 to
20 '76 whether carbon tet was used?

21 MR. CUNNINGHAM: Objection. He's
22 already testified four times that it wasn't
23 used.

24 A I don't know.

25 I can't tell you that because, like I say,

1 the former Pennsylvania Railroad after the
2 merger, people that were on the New York Central
3 side continued to act like they were New York
4 Central; the people on the Pennsylvania side
5 acted like they were Pennsylvania. So what they
6 did, I couldn't tell you. I can just tell you
7 that the New York Central people at Elkhart did
8 not use it. That's all I can tell you.

9 Q Okay.

10 A I heard some of the people say they may have
11 used it at Pennsylvania points, but that's just
12 hearsay. I wasn't watching them.

13 MR. ERMILIO: I have no other
14 questions.

15 MR. MASON: I have nothing further at
16 this time.

17 FURTHER EXAMINATION

18 BY MR. CUNNINGHAM:

19 Q Of your own personal knowledge, you don't know
20 whether or not Magnasol was ever used at
21 Elkhart; is that right?

22 A That's right.

23 Q At any time?

24 A That's right, I don't know that. I do not know
25 that.

1 MR. CUNNINGHAM: Thank you. That's all
2 I have.

3 MR. ERMILIO: I have no questions.

4 We'll read and sign.

5 MR. MASON: Thank you very much, Mr.
6 Mellen.

7 (Deposition concluded at 1:45 o'clock p.m.)

8 + + + oOo + + +

9
10 _____
11 William R. Mellen

12
13 SUBSCRIBED AND SWORN to before
14 me this ____ day of _____,
15 A.D., ____.

16
17 _____
18 Notary Public, State of Indiana
19 County of Residence:
20 My Commission Expires:
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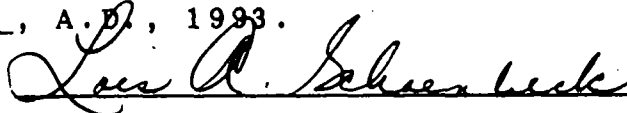
CERTIFICATE

I, Lois A. Schoenbeck, a Notary Public in and for the County of Porter and State of Indiana, do hereby certify there appeared before me at the said time and place WILLIAM R. MELLEN, who was first duly sworn by me to testify the truth, the whole truth, and nothing but the truth to questions propounded at the taking of the foregoing deposition.

I further certify that I then and there reported in machine shorthand the proceedings at the said time and place; that the proceedings were then reduced to typewriting from my original shorthand notes; and that the foregoing typewritten transcript is a true and correct record thereof.

I further certify that the deposition was read and signed in the presence of a duly authorized officer.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this _____ day of _____, A.D., 1993.



Lois A. Schoenbeck, Notary Public
State of Indiana, Porter County
My Commission Expires 08-19-94